

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

P-4257-US1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number

10/551,053

Filed

May 16, 2007

First Named Inventor

AVNI, Dov

Art Unit

3777

Examiner

BRUTUS, Joel F.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 37,912

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Caleb Pollack

Typed or printed name

646-878-0800

Telephone number

January 28, 2011

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".

☐

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	AVNI, Dov et al.	Examiner:	BRUTUS, Joel F.
Serial No.:	10/551,053	Group Art Unit:	3777
Filed:	May 16, 2007	Confirmation No.:	4577
Title:	APPARATUS AND METHOD FOR LIGHT CONTROL IN AN IN-VIVO IMAGING DEVICE		

REASONS ACCOMPANYING REQUEST FOR PRE-APPEAL BRIEF REVIEW

Sir:

This request for pre-appeal review conference is being filed in response to the final Office Action mailed September 28, 2010 and the Advisory Action mailed December 9, 2010 by the United States Patent and Trademark Office in connection with the above-identified Application. A response to the final Office Action was due December 28, 2010. This paper is being filed in conjunction with a petition for a one-month extension of time. Accordingly, this paper is being timely filed. A notice of appeal together with the required fee is being filed herewith.

In this paper, Applicants identify (1) an omission of essential elements required to establish a *prima facie* rejection and (2) errors in facts in the Office Action dated September 29, 2010. No amendments accompany this request.

Status of Claims

Claims 81, 85, 90, 91 and 97-102 are currently pending in the Application. Claims 86-89 and 92-94 have been withdrawn from consideration. The response filed November 29, 2010 has not been entered and the amendments provided in that paper are not being discussed herein.

Summary

In the Office Action, the Examiner rejected claims 81, 85, 90-91, and 97-102 under 35 U.S.C. § 103 as being unpatentable over Tanaka et al. (US Patent No. 6,667,765) in view of Yamanaka et al (US Patent No. 6,219,091) and further in view of Higuchi et al (US Patent No. 6, 254,531) and further in view of Fulghum (US Patent No. US Patent No. 6,364,829).

The Examiner does not provide a prima face rejection, as nowhere in the September 28, 2010 Office Action does the Examiner explain where Applicants' claim limitation of "the control pixels being a *subset* of the plurality of pixels" exists. The Examiner does not provide a prima face rejection, as the combination of references listed by the Examiner includes references which are not tied by the Examiner to specific Applicant claim limitations, and which seem duplicative to each other regarding which of Applicants' claim limitations to which they *might* apply.

In addition, certain limitations, e.g. "the control pixels being a subset of the plurality of pixels," are clearly not taught or suggested by the prior art cited by the Examiner. The Examiner's statement regarding this limitation made in the Advisory Action is incorrect.

35 U.S.C. § 103 Rejection

Applicants' claim 81 recites, inter alia:

a controller, wherein the controller is configured to, across a plurality of imaging periods, within each imaging period, operate the light source to emit white light, record, via one or more control pixels, the control pixels being a subset of the plurality of pixels, the amount of the white light that is reflected to the imaging device, control the image gain level of the imager based on the amount of the white light that is reflected to the imaging device, and capture and transmit an image frame.

Claims 90, 97 and 100 each include different limitations from claim 81, but for the purpose of the arguments below, similar claim limitations will be discussed.

On page 3 of the September 28, 2010 Office Action the Examiner stated that Fulghum teaches a pixellated CMOS device, but the Examiner did not in the Office Action assert that Fulghum teaches control pixels. Since the Office Action did not point out where the

APPLICANT(S): AVNI, Dov et al.
SERIAL NO.: 10/551,053
FILED: May 16, 2007
Page 3

limitation of control pixels being a *subset* of the plurality of pixels was taught in the prior art (in Fulgham or in any other reference), a prima face rejection has not been presented.

On the Continuation Sheet attached to the December 9, 2010 Advisory Action, the Examiner stated that "Fulgham further discloses using 1/2 to 1/3 of pixels [see column 10 lines 1-15] which constitutes subset of all the pixels."

The section of Fulgham to which the Examiner cited describes analyzing each pixel of an image for an abnormality (dysplasia, see col. 9, line 34). The "1/2 to 1/3" to which the Examiner refers does not describe an amount or number of pixels, but rather a level within each pixel analyzed. If this ratio is met, the pixel value is set to green only, to indicate to a viewer that a dysplasia exists (Fulgham, col. 10, ll. 5-14). In addition, the section of Fulgham to which the Examiner cited in the Advisory Action does not teach using pixels as input for any reason (including illumination level control) but rather teaches setting the output of image pixels. (Fulgham col. 10, l. 6, line 12) The section of Fulgham to which the Examiner cited in the Advisory Action does not teach using a ratio of half or a third to define a number of pixels, but rather teaches using half or a third as a ratio or a level for processing individual pixels. (Fulgham col. 9, l. 66 to col. 10, l. 5)

Fulgham does not in fact teach control pixels, or "control pixels being a subset of the plurality of pixels".

On page 3 of the Office Action the Examiner stated that the Application discloses that control pixels may be adapted for fast readout which is well known in the art. However, in paragraph [0129] of the Application as published, cited to by the Examiner, "fast readout" is the only teaching that is described as being known in the art. Paragraph [0129] states that the novel use of control pixels is new and is not in the prior art. Paragraph [0151], also cited to by the Examiner, merely states that in one embodiment the control pixels may be regular pixels assigned to the function of control pixels.

The Examiner stated in the Office Action that Yamanaka discloses controlling light operation based on a plurality of pixels, and that Higuchi teaches a plurality of pixels and controlling light operation. However, the Examiner did not assert that either Yamanaka or Higuchi disclosed "control pixels being a subset of the plurality of pixels." It is unclear which

APPLICANT(S): AVNI, Dov et al.
SERIAL NO.: 10/551,053
FILED: May 16, 2007
Page 4

teachings of each of these references is applicable to Applicants' claims, and thus a prima face rejection was not presented.

In addition, neither of Yamanaka or Higuchi included control pixels as claimed in Applicants' pending claims.

On page 4 of the Office Action the Examiner asserted that Tanaka taught an "exposure control time value" and determining an amount of light based on "exposure time." However, these teachings do not disclose comparing light received at "a sampling instance" as required in claim 90.

In addition, Tanaka does not teach or disclose Applicants' claim limitations. Column 8, ll. 26-43 and column 5, ll. 44-59 of Tanaka does not disclose capturing images "across a plurality of imaging periods", as asserted by the Examiner on page 2 of the Office Action. The Examiner notes on page 3 of the Office Action that Tanaka does not disclose operating the light source via control pixels.

Therefore, independent claims 81, 90, 97 and 100 are allowable over Tanaka, Yamanaka, Higuchi, Fulghum, and the information provided in Applicants' specification, alone or in combination.

Each of claims 85, 91, 98-99, and 101-102 depends from one of claims 81, 90, 97, or 100 and includes all the limitations thereof. Therefore, each of claims 85, 91, 98-99, and 101-102 are likewise allowable.

Accordingly, Applicants respectfully request that the rejection of claims 81, 85, 90-91, and 97-102 under 35 U.S.C. § 103 be withdrawn.

Conclusion

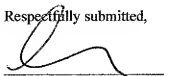
In view of the foregoing remarks, Applicants assert that the pending claims are allowable. Their favorable reconsideration and allowance is respectfully requested.

Should the Examiner have any question or comment as to the form, content or entry of this paper, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

APPLICANT(S): AVNI, Dov et al.
SERIAL NO.: 10/551,053
FILED: May 16, 2007
Page 5

The fees for the petition for extension of time and notice of appeal are being paid separately. No additional fees are believed to be due in connection with this paper. However, if any such fees are due, please charge any fees associated with this paper to deposit account No. 50-3355.

Respectfully submitted,



Caleb Pollack
Attorney/Agent for Applicant(s)
Registration No. 37,912

Dated: January 27, 2011

Pearl Cohen Zedek Latzer, LLP
1500 Broadway, 12th Floor
New York, New York 10036
Tel: (646) 878-0800
Fax: (646) 878-0801